Sedition in Respect of Freedom of Speech and Expression: Indian Legal Perspective

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Abstract

The Premise of the study is to widen the domain of knowledge and to apprise the people about Sedition so that they should have cognition about the speeches or writing or sign or visible representation that fall under the ambit of Sedition, to let people get well acquainted with the basics of Sedition. The irony of the Law is in the very Fact that it allows for criticism of the Government but doesn't allow truth as its defence. When it is the duty of the people to comment fairly upon the Government, how truth could be neglected as a defence of the crime. The nature of this crime is vested in the concept of sovereignty and the authority of it. It is not the Government which is sovereign; it is the country which is sovereign, and its people are sovereign. Now when the Government is no more the sovereign, they don't have the right to possess the protection against Sedition. Another thing which is important is that whether the word Sedition is too used in article 19(2) and if it was to be used in what sense it was to be used. On one hand we accepted the view supported by numerous authorities that Sedition was an offence against the public tranquility and was connected in some way or other with public disorder and on the other hand there was the Pronouncement of the judicial committee that Sedition as defined in the Indian Penal Code did not necessarily imply any intention or tendency to incite disorder. In these circumstances it is not surprising that they decide not to use the word 'Sedition' in clause (2) but used the more general words which cover Sedition and everything else which make Sedition such as serious offence. That Sedition does undermine the security of the state usually through the medium of public disorder is also a matter which undermines the security of the state. This is another significance of the study to

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find out the ambiguity or loopholes in the Sedition Law and in what manner this Law should be applicable. In present scenario the Law of Sedition is too misused by the central as well as by state authorities against an individual citizen for fair criticism of a politician or public personality and or against a fair criticism of their policies. The study adopted doctrinal method with and the object of the study is to evaluate the Sedition Law with the freedom of speech and expression of a common citizen is not be infringed by the Government in the name of National security or its integrity.

1.0 INTRODUCTION

The law of sedition has been constantly misused by the government in power at the Centre and the States in the name of national security and integrity. In that condition article 19(1) (a) of the constitution is infringed. Due to this misuse, questions have frequently been raised as to how an individual, having the freedom of speech and expression as a Fundamental Right, can be convicted for the offence of sedition.

One of the major problems with the law of sedition is that the political leaders take advantage of the vague definition of the offence of sedition given in Section 124A of IPC which is much wider in terms of the interpretation given by the Hon'ble Supreme Court in *Kedar Nath v. State of Bihar*[2], in which the court upheld the constitutionality of law of sedition by striking the correct balance between the law of sedition on one hand and fundamental right of freedom of speech and expression on the other.

Another problem with this law in terms of freedom of speech and expression is its manner of application. There are no clear and uniform guidelines as to the situations in which the allegation of sedition can be levied. It is submitted that though a very small number of sedition cases has led to actual conviction, it causes harassment of individuals till the time judgment comes out, which in various cases takes many years to come. The charges have rarely stuck in

[2] AIR 1962 SC 955.

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most of the cases, but the process itself becomes the punishment. The lack of consistency in the judgements has contributed to an inconsistent terrain of free speech rights and left the door open to continued use of the law by local officials and interest groups to harass and intimidate unpopular and dissenting opinions.[3] "If the freedom of speech is taken away then dumb and silent, we may be led, like sheep to the slaughter".[4] India, being a colony of the British in the past, has inherited quite a number of laws, which have time and again lead to a controversy. One such law is the law relating to seditious offences. Since independence, the governments have introduced certain amendments to the law relating to seditious offences, to make it withstand to the constitution.[5] However, this law has been used by contemporary governments to curtail or restrict freedom of speech and expression. Jawaharlal Nehru also emphasized on the importance of free speech as "I would rather have a completely free speech and expression with all dangers involved in the wrong use of the freedom, than a suppressed of regulated speech and expression". In this chapter, whether the presence of sedition as an offence under the Indian Penal Code, 1860 (hereinafter referred to as IPC) restricts free speech is being discussed.

2.0 FREE SPEECH AND CONSTITUTION OF INDIA

The Constitution of India guarantees to all its citizens a fundamental right of freedom of speech and expression under Article 19 (1)(a)[6] which is subject to the laws imposing restrictions.[7] Citizens will take the initiative of educating each other in the society, if they are exposed to the

[3]Human rights watch report, available at: https://www.hrw.org/report/2016/05/24/stifling-dissent/criminalization-peaceful-expression-india (last viewed on April 28, 2022).
[4] George Washington, was an American political leader, military general, statesman, and Founding Father of the United States, who served as the first president of the United States from 1789 to 1797.

[5] Nivedita Saksena and Siddhartha Srivastava, "An Analysis of the Modern Offence of Sedition", 7 NUJS Law Review (2014).
[6] Article 19(1) of the Constitution of India: All citizens shall have the right
(a) to freedom of speech and expression.
[7] Article 19 (2) of the Constitution of India: nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

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ideas and the information available. This can be achieved by debates and public discussions, which in turn would increase citizen's participation in the affairs of a nation. This whole process of getting a citizen's feedback on the policies of the government also satisfies the utilitarian demand of choosing policy decisions that ensure satisfaction of the greatest number. The Supreme Court of India, also cited an observation in this context, observing that "communication prompts a dialogue within society wherein people can choose to either defend or question the existing social moves"[8]

John Stuart Mill advocated for the free flow of ideas or opinions to secure a stability in the democratic society. He opined that this could be achieved by guaranteeing freedom of speech and expression to the citizens.[9] The Supreme Court of India, elucidated the connection between the freedom of speech and expression and democracy in Re Harjai Singh,[10] that the first and the foremost requirement of a democratic society is the participation of the citizens in the affairs of the state. This can only be achieved when the citizens get the true information of policies undertaken by the government so that they are in a position to put forward their dissenting opinions if any.[11] Again, in S. Khusboo v. Kanniamal and Anr.[12], the Supreme Court highlighted the importance of free flow of thoughts in a democratic set up which will ensure good governance. The court held that people should not have a fear of authorities while excursing their right to freedom of expression even when expressing dissenting opinions.[13]

3.0 THE CONSTITUENT ASSEMBLY DEBATES ON SEDITION

[8] Khushboo v. Kanniammal, 2010 (4) SCALE 467.
[9] Law Commission of India, Consultation Paper on Sedition, August 30, 2018.
[10] AIR 1997 SC 73.
[11] Ibid.
[12] AIR 2010 SC 3196.
[13] Ibid.

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From the Constituent Assembly Debates it is understood that there had been serious opposition for inclusion of sedition as a restriction on freedom of speech and expression under the then Article 13 of the draft Indian Constitution. Such a provision was termed as a shadow of colonial times that should not see light of the day in free India. The draft of 'Justiciable Fundamental Rights' prepared by Fundamental Rights Sub-Committee, drafted Article 8,[14] constituting freedom of speech and expression with an exception that in the event of 'utterance of seditious matter, the government has the power to restrict the speech.[15]

Mr. Somnath Lahiri,[16] a member of the sub-committee disapproved in making sedition a restriction on freedom of speech and expression. He observed that the freedom of speech and expression as a right has been framed from a police constable's point of view and not from the point of view of a free and fighting nation. He feared that such a restriction, might be misused by government in power to suppress any voice against it. The issue of making sedition as a restriction on the freedom of speech and expression was debated again, when the interim report of the sub-committee was submitted before the Constituent Assembly. It was presented as Article 13 before the assembly, followed by extensive debate. Shri Damodar Swarup Seth, argued that such civil rights like freedom of speech and expression must be free from any restrictions such as libel, slander, defamation, sedition, otherwise the very purpose of granting

[14] "Rights of freedom: There shall be liberty for the exercise of the following rights subject to public order and morality or to existence of grave emergency declared to be such by the government of the union or unit concerned whereby the security of the union or the unit, as the case may be, is threatened:-
The right of every citizen to freedom of speech and expression, provision may be made by law to make the publication or utterance of seditious, obscene, blasphemous, slanderous, libelous or defamatory matter actionable or punishable".

[15] Draft of 'Justiciable Fundamental Rights', Art. 8 as prepared by Fundamental Rights Sub- Committee, Constituent Assembly of India, Vol III, available at: https://cadindia.clpr.org.in/constitution_assembly_debates/volume/3/1947-04-2 (last viewed on May 13, 2022).

[16] Mr. Somnath Lahiri was an Indian statesman, writer and a leader of Communist Party of India. He was a member of Constituent Assembly of India from Bengal and later served as a member of Odisha legislative assembly. He was the sole communist member in the Constituent Assembly in 1946.

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such right would be defeated.[17] The Constituent Assembly was unanimous in having the word sedition‘ deleted from Article 13 of the draft Constitution.

During the discussions Shri M. Ananthasayanam Ayyangar said: If we find that the government for the time being has a knack of entrenching itself, however bad its administration might be *it must be the fundamental right of every citizen in the country to overthrow that government without violence,* by persuading the people, by exposing its faults in the administration, its method of working and so on. The word 'sedition' has become obnoxious in the previous regime. We had therefore approved of the amendment that the word 'sedition' ought to be removed, *except in cases where the entire state itself is sought to be overthrown or undermined by force or otherwise, leading to public disorder; but any attack on the government itself ought not to be made an offence under the law.* We have gained that freedom and we have ensured that no government could possibly entrench itself, unless the speeches lead to an overthrow of the State altogether.[18]

Shri K.M. Munshi defended the omission of the word sedition from the said article, observing that “the term sedition was of doubtful and varying import and did not fit in the phraseology of the article”. He also suggested substitution of words which ‘undermines the security of, or tends to overthrow, the state' in place of sedition.[19] Sardar Hukum Singh was also against the retention of word sedition in the said article. He argued the idea of retaining sedition as a restriction would take away the power of court to declare sedition law as unjust, wherever it finds so.[20] Pandit Thakur Das Bhargava also supported the motion for excluding sedition from

[17] Ibid. Shri Damodar Swarup Seth was a member of Constituent Assembly from United Provinces (now Uttar Pradesh. He was also a national executive member of the Socialist Party of India.
[18] Constituent Assembly of India, 2nd December 1948; Constituent Assembly Debates Official Report, Vol.VII, Reprinted by Lok Sabha Secretariat, New Delhi, Sixth Reprint 2014.
[19] Ibid. Kanaiyalal Maneklal Munshi, popularly known as K.M. Munshi, was an Indian Independence movement activist, politician, writer and educationist from Gujarat state. He was also founder of Bharatiya Vidya Bhavan, an educational trust in 1938.
[20] Ibid. Sardar Hukum Singh was an Indian politician and the speaker of the Lok Sabha from 1962-1967. He was elected to the Constituent Assembly of India as a member of Shiromani Akali Dal.

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the said article and also proposed the addition of the word 'reasonable' followed by 'restrictions'. The rationale behind the addition of word 'reasonable' was to give power to courts to declare unconstitutional any restriction on freedom of speech and expression if it fails the test of reasonableness.[21]

Seth Govind Das argued that the very basis of adding Section 124A in the IPC was to prosecute freedom fighters, therefore, there shall be no place for such a law in fee India.[22] T.T. Krishnamachari by supporting its exclusion from the said Article, observed that since the law of sedition has been used in the past, against our leaders, therefore, no Indian would recommend its retention as a restriction on freedom of speech and expressions.[23]

The Constituent Assembly reached a consensus that instead of using the word 'sedition' some more general words such as 'undermines the security of the state' to be used as such words would include sedition as well. The Constituent Assembly decided to drop the express mention of sedition as a restriction on freedom of speech and expression and Article 13 (2) was adopted with amendments and enumerated as Article 19 (2) in the Constitution.[24]

4.0 SCOPE OF THE OFFENCE OF SEDITION UNDER INDIAN PENAL CODE, 1860

The word sedition is appended to the section only as a marginal note and is not an operative part of the section.[25] Section 124A of IPC, constitutes two parts, with first one defining the

[21] Ibid. Pandit Thakur Das Bhargava was a member of Constituent Assembly of India and later was a member of Parliament representing Hisar, Haryana in the Lok Sabha.
[22] Ibid. Seth Govind Das was an Indian Independence activist and a distinguished Parliamentarian. He was well known for his support of Hindi as the national language of India. He was also a close associate and follower of Mahatma Gandhi. The Government of India awarded him the civilian honour of the Padma Bhushan in 1961.
[23] Ibid. T.T. Krishnamachari was the Indian Finance Minister from 1956-1958 and from 1964-1966. He was also a founding member of the first governing body of National Council of Applied Economic Research in New Delhi. He was a member of Drafting Committee and later served as a Deputy Viceroy from 1947-1950.
[24] "Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevents the State from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State".
[25] Aishwarya Narayanan, "A Theoretical Analysis of Law of Sedition in India", 4 CULJ 87- 101 (2015).

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offence and the other prescribing the punishment. Since its incorporation, the meaning and the scope of the offence has been the subject of controversy.[26] The reason behind such controversy is the language used in defining the offence. The provision relating to offence of sedition makes use of certain words such as hatred, contempt, disaffection on one hand and on the other talks about disapprobation, without exiting such hatred, contempt and disaffection. The section also punishes the attempt to excite hatred, contempt or disaffection but is silent about how or when a person is supposed to do.[27]

In order to understand the scope of the section, it is essential to discuss its ingredients under Section 124A of IPC, which is as follows:

Section 124A of IPC, provides that,

a) *Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise,*
b) *brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection*
c) *towards, the Government established by law in India*

shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

'Whoever': The word 'whoever' includes the speaker, anyone who is responsible for writing, publishing, printing or disseminating would be held liable under the section.[28]

[26] Shivani Lohiya, Law of Sedition 7 (Universal Law Publishing, New Delhi, 2014).
[27] Ibid.
[28] W.R. Donogh, A Treatise on the Law of Sedition and Cognate Offences in British India 84 (Calcutta: Thakker, Spink and Co., 1911).

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In case of liability of the publisher or printer of seditious material, presumption is raised against them that they had the knowledge about the seditious nature of the material being published or printed unless proved otherwise.[29] Therefore, it can be concluded that all those who participated directly or indirectly in the dissemination of the seditious material can be held liable under the principles of joint liability laid down under section 34 of the Indian Penal Code, 1860.[30]

In the case of booksellers and newsvendors, responsible for disseminating seditious content the law is clear that if they are not aware of the seditious nature of the material being sold then they cannot be held liable under the section.[31]

'by words, either spoken or written or by signs or by visible representation or otherwise'. Section 3 (65) of the General Causes Act, 1897,[32] Writing seditious content is not an offence in itself, it is only its dissemination which is punishable. Therefore, in case of a seditious speech, the persons responsible for broadcasting it would also be held liable. No specific form of seditious content is necessary.[33] The words 'or otherwise' includes all other modes through which seditious material may be disseminated.[34]

'Brings or attempts to bring into hatred or contempt or excite or attempts to excite disaffection': The words 'hatred' and 'contempt' were added in the section 124A of IPC by Indian Penal Code (Amendment) Act, 1898. The addition of these words was the result of problem faced by Judges to interpret the word disaffection. The word disaffection was interpreted in aid with

[29] Supra note 21
[30] "Acts done by several persons in furtherance of common intention – when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone".
[31] Ramaswami v. Lokananda, 9 Mad. 387.
[32] Section 3(65) of General Clauses Act, 1897: expression referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form.
[33] Ratanlal & Dhirajlal, Law of Crimes 569 (Lexis Nexis, New Delhi, Vol I, 26th edn., 2007).
[34] Ibid.

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hatred and contempt in Queen Empress v. Jogendra Chandra Bose[35] and Empress v. Bal Gangadhar Tilak.[36]

Hatred implies an extremely strong feeling of dislike and contempt implies that is having a low opinion. One may disown or shun something hated but in a case of contempt there is a feeling of pity. These two refers to a state of mind. Hatred and contempt may be produced by way of writings targeting the government of corrupt and malicious motives in respect of welfare of the people.[37]

Disaffection implies feelings of disloyalty and enmity towards the government. The term disloyalty is perhaps the best general term, comprehending every possible form of bad feelings against the government.[38] when this feeling of disaffection is confined to an individual, it does not give rise to a charge under Section 124A of IPC, but when he tries to excite in others a feeling of hatred, contempt or disaffection against the government then it amounts to sedition under Section 124A of IPC[39]

'Government established by law in India': The definition of 'government' under old section 17 of the IPC[40] refers the Central Government or the State Government and the similar definition of government is provided under section 3 (23) of the General Clauses Act.[41]

The significance of a State Government established by law was recognized by the Supreme Court of India in Kedar Nath Singh v. State of Bihar,[42] by observing that "the continued

[35] ILR 19 Cal 35.
[36] ILR 22 Bom 112.
[37] Supra note 28
[38] Empress v. Bal Gangadhar Tilak, ILR 22 Bom 112.
[39] Sedition in Criminal Jurisprudence, available at : http://shodhganga.inflibnet.ac.in/bitstream/10603/143397/9/09_chapter%203.pdf (last viewed on May 22, 2022).
[40] Section 17 of the Indian Penal Code: "Government".
The word "Government" denotes the Central Government or the Government of a State.
[41] Section 3(23) of General Clauses Act, 1897: "Government" or "the Government" shall include both the Central Government and any State Government;
[42] AIR 1962 SC 955.

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existence of the government established by law is an essential condition of the stability of the state."[43] The court further observed that the term 'Government' is different from the people who are responsible for carrying out duties of the government. Therefore, if any seditious writing excites hatred or contempt towards those persons then it will not constitute sedition.

Each case is different, therefore, even if in common language, the ministers are referred to as 'the Government' they are not 'the Government' within the meaning of sections 17 and section 124A of IPC. Ignoring practice, the ministers are the Governor's advisors in a real sense.[44]

What is not sedition? The two explanations annexed to Section 124A of IPC clearly states what is to be excluded from the scope of offence of sedition. What is not sedition as given under Section 124A of IPC is as follows: -

(a) Comments expressing disapprobation of the measures of the Government, with a view to obtain their alteration by lawful means, or

(b) The administrative or other action of the government

Comments (remarks regarding the policies or actions of the government) not coupled with excitement or attempt to execute hatred, contempt or disaffection, do not constitute an offence under section 124A of IPC.

The object of explanation is to protect honest journalism and bonafide criticisms of public measure and institutions, with a view to their improvement, and to the remedying of grievances and abuses, and to distinguish this from attempts, whether open or disguised, to make the

[43] Ibid.
[44] Emperor v. Hemendra Prasad Ghosh, AIR 1939 Cal 529.

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people hate their rulers. So long as a journalist observes this distinction, he has nothing to fear".[45]

what is protected under the explanation 'intention' with which the comments are made against the policies of government and nothing else. Therefore, any writing bearing an attack on the government would not be saved by the 'saving clause'. [46]Intention is immaterial that the speech or writing containing seditious content, great or small, did result in violence or disturbance. It is sufficient to constitute the offence of sedition that the writer or maker of speech intended to excite disturbance.[47]

Under Section 124A of IPC, there is no mention of intention of the accused but in essence, it forms the significant ingredient in determining the guilt of the accused. The general principle that every person is presumed to know the natural consequences of his act is also applied here. The publication containing seditious content must be read in a fair and a liberal spirit. If it raises any doubt as to intention of the accused then, the benefit should be given to the accused.[48]

In order to determine the effect of speech or writing, it must be viewed as a whole and focus should not be on specific words. Further, while determining the intention, surrounding circumstances in which speech was delivered or writing was published must also be considered.[49]

5.0 ATTEMPT TO EXCITE DISAFFECTION, HATRED OR CONTEMPT

[45] Empress v. Bal Gangadhar Tilak, ILR 22 Bom 112.
[46] Supra note 23
[47] Ankur Gupta, "Sedition", available at: http://www.rmlnlu.ac.in/webj/sedition.pdf (last viewed on May 11, 2022).

[48] Queen Empress v. Luxman Narayan Joshi 1900 (2) BOM LR 286.
[49] Mani Ben Lila Dhar v. Emperor AIR 193 BOM 65.

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Attempt has not been defined under the IPC. According to Salmond "an attempt is an act of such a nature that it is itself evidence of the criminal intent with which it is done".[50]

Attempt is that action by the offender, towards the commission of crime, which he takes with an intention to commit crime, but fails. Therefore, attempt is termed as 'Inchoate crime' which means an incomplete crime. Penalizing Attempt to commit a crime, makes the scope of an offence wider, but to prove 'attempt', 'intention' to commit a crime must be proved as negligence or recklessness is not the criteria to prove the charge of attempt.[51]

The ingredients of law of attempt laid down in two early English cases of R v. Scofield[52] and R v. Higgins[53]and followed in the later English and Indian cases, involves three elements to prove a charge of attempt. These are:

- *Overt act, on behalf of the accused must be proved.*
- *mens rea or guilty intention must be proved.*
- *An interruption in the series of acts and omission. The reason for such an interruption is immaterial.*

[50] Edwin R. Keedy, "Criminal Attempts at Common Law", available at: https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=7779&context=penn_law_review (last viewed on May 16, 2022)

[51] Attempt as an Inchoate Crime, available at: https://en.wikipedia.org/wiki/Inchoate_offense (last viewed on May 18, 2022).

[52] Cald. 397 (1784), in this case, Lord Mansfield observed: "When an act is done the law judges, not only of the act done, but of the intent with which it is done, and, if it is coupled with an unlawful and malicious intent, though the act itself would otherwise have been innocent, the intent being criminal, the act becomes criminal and punishable", available at : http://14.139.60.114:8080/jspui/bitstream/123456789/742/17/Criminal%20Attempt.pdf (last viewed on May 18, 2022).

[53] (1801) 2 East S at II; 102 E.R. 269 at 272, in this case, Higgins had asked a man's servant to steal a quantity of rope from the servant's master. The servant did nothing, but the plot was discovered, and Higgins was brought to trial. His counsel argued that although an attempted felony was a crime, an attempt at a misdemeanor was not, and Higgins' act had clearly been no more than an abortive attempt at the misdemeanor of solicitation. He was, however, convicted and the Court said in part: "every attempt to commit a crime, whether felony or misdemeanor, is itself a misdemeanor and indictable", available at : https://digitalcommons.hollins.edu/cgi/viewcontent.cgi?article=1011&context=philfac (last viewed on May 18, 2022).

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The Law Commission of India has recommended the addition of new chapter VB with a title 'of Attempt' in the IPC, consisting of two sections 120C[54] and 120D[55], to bring together the inchoate offences. With the addition of these two sections, the deletion of Section 511 has been proposed, to remove the confusion regarding definition and scope of 'attempt'.

6.0 THE PROCEDURAL ASPECT

Section 196 of the Cr.P.C[56]. provides a procedure for initiating a prosecution under Section 124A of IPC Section 196 of Cr.P.C. states that prosecution for sedition must be initiated only

[54] Attempt – A person attempts to commit an offence punishable by this code, when –
a) He, with intention or knowledge requisite for committing it does any act towards its commission;
b) The act so done is clearly connected with, and proximate to, the commission of the offence; and
c) The act fails in its object because of facts not known to him or because of circumstances beyond his control.

[55] Punishment for Attempt – Whoever is guilty of an attempt to commit an offence punishable by this code with imprisonment for life, or with imprisonment for a specified term, shall, where no express provision is made by this code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life, or as the case may be, one-half which may extend to one-half of the imprisonment for life, or, as the case may be, one half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.

[56] Section 196 in The Code of Criminal Procedure, 1973
Prosecution for offences against the State and for criminal conspiracy to commit such offence.
1) No Court shall take cognizance of-
   (a) any offence punishable under Chapter VI or under section 153A, of Indian Penal Code, or 2 Section 295 A or sub section (1) of section 505] of the Indian Penal Code (45 of 1860) or
   (b) a criminal conspiracy to commit such offence, or
   (c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.
   (1A) 2 No Court shall take cognizance of-
   (a) any offence punishable under section 153B or sub- section (2) or sub- section (3) of section 505 of the Indian Penal Code (45 of 1860), or
   (b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]
2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal code (45 of 1860), other than a criminal conspiracy to commit 1 an offence] punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings: Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.
3) The Central Government or the State Government may, before according sanction 2 under sub- section (1) or sub- section (1A) and the District Magistrate may, before according sanction under sub- section (1A) and the State Government or the District Magistrate may, before giving consent under sub- section (2), order a preliminary investigation by a police officer not being below the 1 Subs. Act. 45 of 978, s. 16, for" a cognizable offence" (w. e. f. 18- 12- 1978) 2 subs. and ins by act 63 of 1980 s. 3 (w. e. f. 23- 9- 1980)

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after taking government's approval.[57] Thus, it constitutes an exception to the general rule that any person, having knowledge of commission of an offence, may initiate proceedings in the court.[58] The rationale behind such a policy is to prevent any false prosecution in such a serious offence. 115It is the administrative function of the government to sanction the prosecution for sedition, after considering facts of each case. The decision of the government may not be supported by any legal evidence but its decision needs to be supported by reasons, in case withholding the sanction.[59] A preliminary investigation by a police officer not below the rank of inspector, may be authorized by the government where making a decision regarding sanction for prosecution.[60]

In Aveek Sarkar v. State of West Bengal[61] the Calcutta High Court observed that procedure under Section 196 Cr.P.C. is mandatory. Further Section 190 of Cr.P.C.[62] is the 'genus' prescribing the general procedure to be adopted while Section 196 Cr.P.C. is a 'specie' prescribing a special procedure to be followed in certain cases.[63]

In Arun Jaitley v. State of UP[64], the Allahabad High Court held that the Magistrate's action of taking cognizance suo moto under Section 124A of IPC was illegal. Section 190 (1)(c) of Cr.P.C., which provides that magistrate has the power to take cognizance of an offence on an

[57]Anandita Yadav, Rethinking Sedition Law in Indian Democracy 69 (2016) (Unpublished dissertation, Indian Law Institute)
[58] Ratanlal &Dhirajlal's The Code of Criminal Procedure 400 (Lexis Nexis, Gurgaon, 21stedn., 2016)
[59] Inguva Mallikarjuna Sharma v. State of Andhra Pradesh, 1978 Cr.LJ 392.
[60] K.N.C. Pillai, RV Kelkar's lectures on Criminal Procedure 119 (Eastern Book Company, Lucknow, 5thedn. 2015
[61] 2015 CriLJ 2503.
[62] Section 190 of Code of Criminal Procedure, 1973: Cognizance of offences by Magistrates.
(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-
(a) upon receiving a complaint of facts which constitute such offence;
(b) upon a police report of such facts;
(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.
(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.
[63] Ratanlal &Dhirajlal's The Code of Criminal Procedure 400 (Lexis Nexis, Gurgaon, 21stedn., 2016)
[64] 2016 (92) All CC 352.

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information received except on police officer's information or upon his own knowledge of such offence, does not carve out an exception to Section 196 Cr.P.C. Further, it is clear from the words used in Section 190 that 'subject to the provisions of this chapter' (Chapter XIV-conditions requisite for initiation of proceedings) which shows that Section 190 must follow the requirements of Section 196 Cr.P.C.

Punishment: The punishment for the offense provided under Section 124A of IPC, is three years rigorous imprisonment which may be extended to life imprisonment and fine can also be imposed. The severity of the punishment was also condemned by second Pre-Independence Law Commission, headed by Sir John Romily in 1853 on the basis that the punishment for sedition in England was up to three years.[65] Therefore, it was proposed that punishment in India for offence of sedition must be limited to five years and three years simple imprisonment to be provided as an alternative. But punishment for the offence of sedition remains unchanged till date.[66]

Great latitude is permitted in criticising the Government but, as the explanation makes it clear, it is latitude and not a license. The criticism may be trenchant and incisive but it must not exceed the limits of fair criticism.

7.0 SEDITION IN RESPECT OF FREEDOM OF SPEECH AND EXPRESSION

The line of reasoning against the law of sedition is based on the theory of free speech. Time and again, people have demanded the scrapping of such a draconian law as it stands in way of freedom of speech and expression. The Supreme Court of India, upheld the constitutional validity of law of sedition vis a vis freedom of speech and expression in 1962 subject to certain

[65] Dr. Hari Singh Gaur, Penal Law of India 1262 (Law Publishers (India) Pvt. Ltd., Allahabad, 11thedn., 2011).
[66] Ibid.

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limitations.[67] The argument against the law of sedition is based on the fact that in a democratic set up, the citizens must be free to voice their opinions as this would eventually ensure their participation in the affairs of the government.[68] Participation of the citizens is one of the important facet of stable democracy, therefore, this should not be restricted in case citizens hold different opinion from the government. The use of words like 'We the People of India' And 'Do Hereby Adopt, Enact and Give to Ourselves This Constitution', in the Preamble to the Constitution of India, reflects the status of citizens in this country.

The Supreme Court struck down Section 66Aof the Information Technology Act, 2000[69], which was added by the 2008 amendment to the Act. The draconian section provided for the punishment of three years with fine for posting any message on social media which may cause annoyance, ill will, hatred or criminal intimidation. The court held the section being contradictory to freedom of speech and expression and declared it unconstitutional. The court held that the word 'public order' in Article 19 (2) of the Constitution does not include 'advocacy', but includes 'incitement' and that too having a direct nexus with public disorder[70]

The extent of contradiction between the law of sedition and freedom of speech and expression, can also be analyzed from one more aspect that sometimes, the words are so harmful in themselves that it is imperative on the part of the state to restrict such words in the interest of public.[71] Another author Sarah Sorial has supported the speech act theory and has concluded

[67] Aishwarya Narayanan, "A Theoretical Analysis of Law of Sedition in India", 4 CULJ 87- 101 1(2015).
[68] Ibid.
[69] Section 66A of the Information Technology Act, 2000: Any person who sends, by means of a computer resource or a communication device
(a) any information that is grossly offensive or has menacing character; or
(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device,
(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine.
[70] Shreya Singhal v. Union of India, AIR 2015 SC 1523.
[71] Ibid.

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that any speech by someone in authority and which suggest some violent action must not be protected. it can be concluded that the correct approach is to find a middle way to prevent contradiction between sedition and freedom of speech and expression. Incorporating the above discussed observations, it can be concluded that the speech can only be restricted firstly, if it is made by person in authority, secondly, the impugned words must be understood in the context in which they are used and thirdly, words must suggest a tendency to cause violence or disorder (as observed by Supreme Court in 1962).

8.0 EVENTS OF CONTRADICTION BETWEEN SEDITION AND FREEDOM OF SPEECH AND EXPRESSION

The recent spate of events in the twenty first century has raised concerned about the misuse of section 124A of IPC by the governments in power to curb political dissent. There is a demand from various sections of the society to review the law relating to sedition or repeal it as it stands in a way of freedom of speech and expression. Sedition vis a vis freedom of speech and expression has been a hot topic for discussion in the wake of the following recent events.

In 2002, a new trend of imposing mass charges of sedition emerged in Haryana. This was in relation to a protest made by Bhartiya Kisan Union (hereinafter referred as BKU) against the unfulfilled promise made by the Chautala government for providing free electricity to the farmers in Haryana. The protest was led by Gashi Ram Nain, a Jat farmer. He was arrested and booked for sedition for inciting the farmers to commit acts of violence and to make public officials as hostages. After his arrest, the protest took a new turn, it got worse and in retaliation the police opened fire at the protestors, killing few. The protestors demanded the release of Gashi Ram Nain and approximately 53 protestors were charged with sedition. The Congress tried to take benefit of the situation and it was announced that if congress wins election in Haryana then Gashi Ram Nain would be released. The Congress came to power in 2009 and ordered the scrapping of charges against all the protestors and Gashi Ram Nain was also

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released.[72] In 2005, on the anniversary of 'Operation Bluestar' the President of Dal Khalsa[73] , H.S. Dhami and his spokesperson were arrested and booked under sedition for raising slogans 'Khalistan Zindabad' and urging people to uplift the demand of Khalistan. They took the defence that police twisted the slogans and portrayed them as 'anti-nationals'. In 2012, the charges were dropped as there was no sufficient evidence against the accused.[74]

In 2006, Krantikari Mazdoor Kisan Union (hereinafter referred to as KMKU), working for the rights of the Dalits in Haryana, launched a protest against the distribution of common land in the village Ismailpur in favor of the Dalits. KMKU members illegally took possession of the land and it was also reported that seditious speeches were made. The local newspapers quoted one of the members of KMKU stating, "we will occupy lands on the lines of Maoists in Andhra Pradesh". At this time, police intervened and tried to suppress the protest ok KMKU. There was a clash between the two and by evening 33 protestors were arrested and charged with sedition. Later, the charges were dropped, and the protestors were acquitted of other charges also in 2010. [75]

In 2009, during Haryana Assembly elections, members of Shivalik Jan SangharshManch, urged people of village Chhachrouli, district Yamunanagar, to abstain from voting in election. According to the police report, Pamphlets were pasted on the walls of the village with slogans 'Jantakimukti Ka eh hi rasta, Maovad…Naksalbarilalsalam…Vote nahi do". The police confirmed the presence of Moists people in the village and recovery of arms and amunitions, detonators, hand grenade. The police concluded that the preparation was being done for waging war against the state. The police arrested 19 people from the village and charges like sedition,

[72] Anushka Singh, Sedition in Liberal Democracies 237-242 (Oxford University Press, New Delhi, 2018).
[73] Dal Khalsa was first formed in 1748, when Sikh chieftains joined hands to counter the armed invasion of Ahmad Shah Durrani, who occupied Lahore in 1748. Dal Khalsa was later revived in the twentieth century. It is often said that this was revived by Congress to counter the Popularity of Shiromani Akali Dal, another organization demanding separate state for Sikhs.
[74] Supra note 92
[75] Ibid.

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offence of causing communal disharmony under the IPC and under the Representation of People's Act and under the Arms Act. At hearing the defence counsel argued that charge of sedition was only imposed because under such charge it was difficult to get a bail. After serving three years in jail as undertrials, all the accused were held to be not guilty of sedition as the only evidence against them, was the recovery of a pamphlet merely criticising the government.[76]

Binayak Sen, a civil rights activist and two others were arrested by Chattisgarh Police in 2007 on the charges of Sedition and having links with Naxalites. Raipur Sessions Court found Sen guilty of sedition and sentenced him to life imprisonment. An appeal was filed in the Chhattisgarh High Court challenging the Sessions Court order.[77] The High Court granted bail to Binayak Sen while, orally observing, as per several newspaper reports, that the evidence on record proves no sedition case against Sen.[78]

In November 2010, noted writer and activist Arundhati Roy and 5-6 others were charged with Sedition by Delhi Police for allegedly having made anti-India remarks at an event organized in Kashmir.[79]

Aseem Trivedi, a noted cartoonist was arrested in September 2012, based on a political activist's complaint that his cartoons insulted the country. The charge was in connection to a cartoon he had made depicting the national emblem in support of the anti-corruption movement in the country. The sedition charges were scrapped by the Supreme Court in 2015.[80]

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[76] Ibid.
[77] Dr. Binayak Sen's case, available at : https://globalfreedomofexpression.columbia.edu/cases/binayak-sen-v-chhatisgarh/ (last viewed on May 11,2022).
[78] Ibid.
[79] Sedition charge against Arundhati Roy, available at : http://economictimes.indiatimes.com/news/politics-and-nation/section-124a-from- mahatma-gandhi-to-arundhati-roy-sedition-charges-often-invoked-but-rarely-stick/articleshow/51016526.cms (last viewed on May 11,2022).
[80] Assem Trivedi's case, available at: https://www.abc.net.au/news/2017-10-22/indian- cartoonist-arrested-sedition-free-speech-under-threat/9069294 (last viewed on May 11,2022).

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Anti-Nuclear activist S.P. Udayakumar faced several cases of sedition for protesting against Kudankulam Nuclear Power Plant in Tamil Nadu. Between September and December 2011 alone, the Tamil Nadu Government slapped sedition charges on 6,000 protesters/villagers at a single police station. The petition for revision of the law of sedition as its present version being violative of freedom of speech and expression, was filed by S.P. Udaykumar and Advocate Prashant Bhushan. It was urged in the petition that the Apex Court should intervene to make it mandatory to produce a reasoned order from the Director General of Police in case of arrest of a person on charges of sedition. But the petition was dismissed by the Supreme Court.[81]

In 2012, In Bhagana, Haryana, the conflict between Dalits and their outcast by the Jat community of Haryana, led to levelling of charges of sedition against the Dalits. The dispute was relating to the ownership pf 'shamilat lands' (common village lands). The government put into operation the Mahatma Gandhi Gramin Vikas Yojna under which government was to acquire these lands and redistribute to achieve certain purposes. In reality, the scheme was used as a platform by the Jats to acquire lands. The Dalits protested against the Jats which led to their social exclusion. They protested outside the secretariat and effigy of the Chief Minister was also burnt. The charges of sedition were imposed on six people protesting against the inaction of the government against the misuse of the scheme by the Jats. The media covered the event at full length and after the public pressure mounted the government had to drop sedition charges against the six protestors.[82]

Kanhaiya Kumar, the president of Jawaharlal Nehru University Student's Union along with his colleagues Umar Khalid, Anirban Bhattacharya and one other were arrested and charged with sedition by the Delhi Police for raising anti-India slogans in a student event organized within

[81] S.P. Udaykumar's case, available at : https://www.livemint.com/Politics/nx1XLPFAkcUizu4KmDtj4O/NGO-Common-Cause- moves-SC-challenging-misuse-of-sedition-law.html (last viewed on May 11,2022).
[82] Anushka Singh, Sedition in Liberal Democracies 237-242 (Oxford University Press, New Delhi, 2018).

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the Jawaharlal Nehru University.[83] On 2ndMarch 2016, Kanhaiya Kumar was released on interim bail for lack of conclusive evidence. In January, 2019, police have filed a charge sheet against him, under section 124A of IPC.

In 2016, Former DU lecturer S.A.R Geelani arrested on sedition charges for raising anti-India slogans in Delhi Press Club. The slogans were part of the resentment against the hanging of Afzul Guru. On March 19, 2016 a Delhi Sessions court granted bail to Geelani. Till date it is pending.

In June 2016, Karnataka state police registered a case of sedition on and arrested two police officers for demanding better wages and living and working conditions. They had threatened to go on leave protesting alleged 'harassment' by senior officials, lesser pay and absence of proper leave.[84]

In 2018, three students of Aligarh Muslim University were booked for sedition for raising 'Anti-India' slogans, at a prayer meet for Manan Bashir Wani, Hizbul Mujahideen commander and an aluminous of the university, who was encountered by security forces in Kashmir.[85] In January 2019 seditious charges were pressed against Sahitya Akademi Awardee Assamese litterateur Dr. Hiren Gohain for protesting against the Citizenship (Amendment) Bill, and to give recognition to Manipur People's Protection Bill, 2018.This bill proposes to regulate the entry and exit of those who do not belong to Manipur into the state.[86]

[83] Kanhaiya Kumar's case of Sedition, available at : http://www.thehindu.com/news/cities/Delhi/Govt.-acts-tough-JNU-student-leader- charged-with-sedition/article14075511.ece (last viewed on May 12,2022).
[84] Recent Sedition Cases, available at: https://indianexpress.com/article/india/amu- kashmiri-students-protest-against-sedition-charges-alleged-harassment-5403366/ (last viewed on May 12,2022).
[85] Ibid.
[86] Recent Sedition Cases, available at: https://economictimes.indiatimes.com/news/politics- and-nation/citizenship-bill-sedition-charges-against-sahitya-akademi-awardee-hiren- gohain-scribe/articleshow/67470901.cms (last viewed on May 12,2022).

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In February 2019, a fresh case of sedition has been imposed on V. Shashidhar, the mastermind of Sepoy Mutiny of 2016, (he instigated the police constabulary to go on mass leave to press their demand for better wages)for posting on social media a post criticizing the state government of Karnataka for paying no attention to the conditions of police personnel.[87]

In June 2019, Hard Kaur, a popular rapper, was booked for sedition for posting comments on social media, critical of Yogi Adityanath, the Chief Minister of Uttar Pradesh. She referred him as 'orange rapeman' and also defamed Rashtritya Swayamsevak Sangh chief, Mohan Bhagwat by calling him 'racist murderer'. She commented that Mohan Bhagwat was responsible for all terror attacks in India.[88]

In June 2021, Lakshadweep police on Thursday registered a case of sedition against local resident which cited a recent debate on Malayalam channel 'MediaOne TV' on the ongoing controversial reforms in Lakshadweep, and film activist Aisha Sultana for calling the Union Territory's administrator, Praful K Patel, a bio-weapon being used by the Centre on the island's people.[89]

9.0 PROPOSED AMENDMENT BILLS BY MEMBERS OF PARLIAMENT

In the year 2011, a private member Bill titled the Indian Penal Code (Amendment) Bill, was introduced in the Rajya Sabha by **Mr. D. Raja**. The Bill proposed that section 124A IPC should be omitted. It was reasoned that the British Government used this law to oppress the view,

[87] Recent Sedition charges, available at : https://bangaloremirror.indiatimes.com/bangalore/crime/government-slaps-one-more- sedition-case-against-the-architect-of-2016-sepoy-mutiny-for-his-facebook-post/articleshow/67966117.cms (last viewed on May 12,2022).

[88] Hard Kaur booked for sedition, available at: https://indianexpress.com/article/india/sedition-case-against-rapper-hard-kaur-over- remarks-against-yogi-adityanath-mohan-bhagwat-5790706/(last viewed on May 12, 2022).

[89] https://indianexpress.com/article/india/sedition-case-against-lakshadweep-activist-for-calling-administrator-patel-bio-weapon-7353587/(last viewed on May 12,2022).

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speech and criticism against the British rule. But the law is still being used in independent India, despite having specialised laws to deal with the internal and external threats to destabilise the nation. Thus, to check the misuse of the section and to promote the freedom of speech and expression, the section should be omitted.

Shri Baijayant Panda, a parliamentarian, proposed a bill to amend section 124A of the IPC in 2012. In his proposed amendment the word 'bring'bringsattempts to bring' was replaced by 'advocates' and 'disaffection' was replaced by 'overthrow of the government' and apart from government, 'government institutions' were also in included. The element of mens rea was also explicitly included. The Bill was introduced in 2012 in the Lok Sabha, but lapsed as the Lok Sabha dissolved.

Dr. Shashi Tharoor, a parliamentarian, associated with Indian National Congress, presented a Bill in 2015 proposing amendment to section 124A of IPC The Bill incorporated the rule laid down in by the Supreme Court in Kedar Nath's case in 1962. The Bill attached a proviso that the offence under the section will only be constituted if the alleged act results in 'incitement to violence' and 'commission of any offence' punishable with life imprisonment under IPC. The Bill proposes two explanations instead of three. No action was taken on the Bill and Dr. Shashi Tharoor recently in an article stated that Law Ministry informed the Parliament that no Bill for changes in Law of Sedition is under consideration.[90]

Prof. Saugata Roy, Member of Parliament, associated with Trinamool Congress, presented a Bill in 2016 for amending section 124A of IPC in the proposed amendment the word 'government' was replaced by 'principles of democracy', 'secularism' or 'national unity'. The use of such words further adds to the vagueness already existing in section 124A of IPC.

[90]Dr. Shashi Tharoor, Time to Overhaul the Sedition Law for Good, available at: https://www.outlookindia.com/magazine/story/india-news-time-to-overhaul-the-sedition- law-for-good/301191 (last viewed on May 13,2022).

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Punishment provided was almost similar to the one existing. The proposed amendment provided for 'incitement to violence' as an element to determine the criminality of an act.

The last Bill in the series of four Bills presented by Members of Parliament was of **Bhartruhari Mahtab**, associated with Biju Janata Dal (BJD) in 2016. The Bill incorporated the rule laid down in Kedar Nath's case by including the words like 'inclination to cause harm to public order'. There was no variation in the punishment clause. The Bill also included a Free Speech test of 'direct and imminent danger' based on United States Model, in the third explanation appended to the Draft Bill.

10.0 RECOMMENDATIONS OF LAW COMMISSION

Having discusses the legal perspective, it can be concluded that the language employed in defining the offence of sedition is not precise and needs more clarification. In the wake of it being used to dissent public opinion, people from all walks of life have started questioning its sanctity of sedition in respect of freedom of speech and expression.

In 1954, the Press Commission of India suggested the repeal of law of sedition and incorporation of new provision to deal with situations of violence as a result of expressions to change the system of government with foreign aid or without.[91] The basis of such a recommendation was the Geneva Draft Covenant of United Nations Conference which ran as:

"Freedom of speech in particular carries with its duties and responsibilities and may therefore be subject to necessary penalties, liabilities and restrictions clearly defined by law, but only with regard to: Expressions which incite persons to alter by violence the system of government

[91] D. Gopalakrishna Sastri, The Law of Sedition in India 64 (India Law Institute, New Delhi, 1964).

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or which promote disorder".[92] The issue of reviewing the law of sedition was also taken up in 39th Report of Law Commission in 1968. The commission suggested that "offences like sedition should be punishable either with imprisonment for life or with rigorous or simple imprisonment which may extend to three years, but not more"[93]

In 1971, the Law Commission in its 42nd Report suggested amendment to section 124A of IPC These were:

- *Inclusion of Element of Mens Rea in the provision.*
- *Apart from the government inclusion of more authorities like the Constitution of India, Judiciary, Legislature against whom causing disaffection would be punishable.*
- *Seven years rigorous imprisonment and fine be fixed as a punishment for sedition instead of imprisonment for life or imprisonment of three years, or fine.* [94]

Again in 1971, the Law Commission in its 43rd report, recommended that changes to be adopted as suggested in its previous report.[95]

The Law Commission in its 267th Report in 2017, also made a distinction between the 'sedition' and 'hate speech' on the ground that in order to invoke the provision of Section 124A of IPC, impugned speech must cause a threat to security of State and the sovereignty and integrity of India.[96]

11.0 SEDITION VIS-À-VIS OTHER STATUTES

[92] H.P. Gupta & P.K. Sarkar, Law Relating to Press and Sedition in India, 254-255 (Orient Publishing Company, 1stedn., 2002)
[93] 39th Law Commission Report, "The punishment and imprisonment for life under the Indian Penal Code", available at: http://lawcommissionofindia.nic.in/1- 50/Report39.pdf (last viewed on May 13,2022).
[94] 42nd Law Commission Report (1970), "Indian Penal Code" available at: http://lawcommissionofindia.nic.in/1-50/report42.pdf (last viewed on May 13, 2022).
[95] 43rd Law Commission Report (1971), "Offences Against the National Security", available at: http://lawcommissionofindia.nic.in/1-50/Report43.pdf (last viewed on May 13, 2022).
[96] Law Commission of India Report No.267, Hate Speech March 2017 available at: https://lawcommissionofindia.nic.in/reports/Report267.pdf (last viewed on May 15, 2022).

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Potentiality and impact of expression has always been looked into by the court to determine the permissibility of its restriction.[97] In order to qualify as sedition, the act must be intentional and must cause hatred. Disturbance of public order has been recognised as an important ingredient of sedition in India[98]. The term _public order' has been defined and distinguished from 'law and order' and 'security of State' in Ram Manohar Lohiya v. State of Bihar.[99] The Court observed the difference between the three of them is that of degree. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.

Since sedition is an offence against the State, higher standards of proof must be applied to convict a person for this offence. This is necessary to protect fair and reasonable criticisms and dissenting opinions from unwarranted State suppression. Legitimate speech must be protected and care must be taken that the grounds of limitation are reasonable and just.[100] Section 124A IPC must be read in consonance with Article 19(2) of the Constitution and the reasonableness of the restriction must be carefully scrutinised on the basis of facts and circumstances of the case. On the other hand, there have also been instances where people have been charged with sedition for making statements that in no manner undermine the security of the nation.

Indian Penal Code, 1860, within its ambit covers a wide range of actions threatening the peace of the society. For instance, Chapter VI includes the offences against the State, inter alia, waging or attempting to wage war (section 121), collecting arms, etc. with intention of waging

[97] See S. Sivakumar, ―Freedom of Press vis-a-vis Working of the Constitution‖ 2 Journal of Indian Legal Thought 163-64 (2004).
[98] Kedarnath v. State of Bihar, AIR 1962 SC 955
[99] AIR 1966 SC 740.
[100] Meera Mathew, ―Expression, Advocacy and Incitement‖ Working Paper submitted to the Law Commission of India (2017).

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war against India (section 122), concealing with intent designed to wage war (section 123), covering a wide range of malicious intentions against the State. Chapter VII covers provisions relating to abetting mutiny (section 131 and 132). Further, Chapter VIII, titled ‗of offences against the public tranquillity' covers actions which, if allowed, would disturb the peace of the society. Section 141 defines the unlawful assembly and section 143 provides for the punishment for the same; section 153A prohibits the actions ‗promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and acts prejudicial to maintenance of harmony'; so on and so forth. These provisions take care of any activity which might be indulged into for the purpose of waging war against India or causing disruption of public order.

The Unlawful Activities Prevention Act, 1967, was enacted in view of various resolutions passed by the Security Council of the United Nations to prevent terrorist activities and to freeze the assets and other economic resources belonging to terrorists. The object as to deal with "activities directed against the integrity and sovereignty of India".

The Act 1967 was amended in 2004[101], by which certain provisions of Preventions of Terrorism Act, 2002 (POTA) were incorporated therein. In 2008 the Act 1967 was further amended[102] whereby provisions of POTA, and Terrorist and Disruptive Activities Act, 1987 (TADA), regarding maximum period in police custody, detention without a chargesheet and restrictions on bail were added. The Act 1967 was also amended in 2012[103]

In the case of N.R. Narayana Murthy v. Kannada Rakshana Vakeelara[104], According to Article 51A(a), it shall be the duty of every citizen of India to abide by the Constitution and respect its

[101] The Unlawful Activities (Prevention) Act, 2004 (29 of 2004) (w.e.f.21.09.2004)
[102] The Unlawful Activities (Prevention) Act, 2008 (35 of 2008) (w.e.f.31.12.2008)
[103] The Unlawful Activities (Prevention) Act, 2012 (3 of 2013) (w.e.f.01.02.2013)
[104] AIR 2007 Kant 174

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ideals and institutions, National Flag, National Anthem and the Constitution of India are the symbols of sovereignty and the integrity of the Nation. Public acts of insults to these symbols must be prevented. The Prevention of Insults to National Honour Act, 1971 was enacted and brought on the Statute book.

The Supreme Court of India has reiterated the need to contextualise the form of expression before restricting it.[105] Similar acts can affect public order in different manner in different context. Stressing on the importance of context, the apex Court in the case of Arun Ghosh v. State of West Bengal,[106] held that before limiting any speech the following question must be asked:

Does [the speech] lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affects merely an individual leaving the tranquillity of the society undisturbed?

Constitutional and statutory provisions confer various privileges and immunities on the legislatures and their members[107], Articles 129 and 215 give powers to the Supreme Court and High Courts to punish for the contempt of court[108] The Contempt of Courts Act, 1971, provides the procedure to deal with the issue. Section 2 of the Prevention of Insults to National Honour Act, 1971, makes an insult to the National flag and the Constitution in the manner set out therein, a punishable offence.

The Criminal Law Amendment Act, of 1961 was enacted with the purpose of curbing activities that are "likely to jeopardise the security of the country and its frontiers point".[109] Section 2 of

[105] See Bobby Art International v. Om Pal Singh Hoon, AIR 1996 SC 1846.
[106] AIR 1970 SC 1228.
[107] See also the opinion of Supreme Court in Special reference No. 1 of 1964 AIR 1965 SC 745
[108] See Review of the Contempt of Courts Act, 1971 (Limited to Section 2 of the Act), (2018)
[109] Statement of Objects and the reasons, the Criminal Law Amendment Act, 1961.

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the Act, deals with cases where someone questions the territorial integrity or frontiers of India, which is likely to prejudice the safety and security of the country, and provides for punishment up to three years. Further section 4 (1), empowers the State Government that if it is of the opinion that any newspaper or book contains material which is in contravention of sections 2 and 3(2) of the Act, it may, by notification and reasons recorded, order the forfeiture of the same. The Act of 1961 was amended in 1990 by Act of 1990 and made publication Map of India by any person which is not in conformity with the map published by the Survey of India, a punishable offence.

Therefore, before branding any act as seditious, the gravity of the action must be diligently looked into. If the act does not fall within the ambit of sedition, rather attracts the provisions of some other law, such act may be booked under the same.

12.0 CONCLUSION

No doubt, it is necessary to maintain public order and protect national integrity, but, at the same time law of sedition should not be used as a tool in the hands of authorities to restrict free speech. The use of vague terminology in the provision defining offence of sedition has resulted in miscarriage of justice. Due to the ambiguity in section 124A of IPC, it has become difficult for courts adjudicate upon the said provision of law. India is now a sovereign democratic state. Government may be collapsed even without the foundations of the state being impaired. A law of sedition thought necessary during a period of foreign rule has become inappropriate after the citizens have secured with fundamental rights. This section punishes even a minor attempt to criticise the government which is a violation of fundamental rights guaranteed under Article 19(1)(a). The high ratio of unsuccessful trials of sedition reveal the misuse of law of sedition

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by the authorities. Therefore there is a immediate need to repeal the sedition law in respect of the exercise of the fundamental freedom of speech and expression.

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